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(3)

**IN THE HIGH COURT OF CHHATTISGARH**
**AT BILASPUR**

W.P. No. 1067 /2004

**Petitioner** : SHAILESH KUMAR PANDEY,
aged about 36 years,
S/o Late Shri Vishnu Prasad Pandey
R/o village Mahidalkala
P.O. Gajan, via Rampur Baghelan,
Distt. Satna (M.P.)

P. R. No. 1019/04
Presented by Shri O.G. Upadhyay
dated 19.2.04

VERSUS

**Respondents** :

1. State of Madhya Pradesh,
Through : Secretary,
Department of Forest,
Bhopal (C.G.)
2. State of Chhattisgarh,
Through : Secretary,
Department of Forest,
D.K.S. Bhawan, Raipur (C.G.)
3. Principle Chief Conservator of
Forest, Raipur (C.G.)
4. Conservator of Forest,
Kanker Circle,
Kanker (C.G.)
5. Divisional Forest Officer,
Forest Division Narayanpur,
Narayanpur (C.G.)

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Clerk to A.G. Bilaspur

**WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, AND ANY OTHER ORDER OR DIRECTION AS DEEMED FIT.**

AFR

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# HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

## W. P. No. 1067 of 2004

Shailesh Kumar Pandey

Versus

State of Madhya Pradesh and others

ORDER

Post for 5-01-2007

Sd/-
Satish K. Agnihotri
Judge

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HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

Single Bench : Hon'ble Shri Satish K. Agnihotri, J.

W.P. No. 1067 of 2004

Petitioner — Shailesh Kumar Pandey

Versus

Respondents — State of Madhya Pradesh and others.

Shri Ayaz Naved, counsel for the petitioner.
Shri V.V.S. Murthy, Dy. A.G. with Shri Arvind Dubey, Panel Lawyer for the State/ respondents No.2 to 5.
None for respondent No.1.

ORDER

(Passed on 15th January, 2007)

This petition filed under Articles 226/227 of the Constitution of India is directed against the impugned order dated 14.09.1994, whereby the petitioner was removed from service on the ground of remaining absent for a long period i.e. 05.11.1993 onwards.

(2). The indisputable facts in nutshell are that the petitioner was appointed as Lower Division Clerk on temporary basis by order dated 07.09.1993 (Annexure-P/1) subject to certain terms and conditions. One of the conditions for appointment was that the temporary service of the petitioner could be terminated at any time with one month's prior notice or in lieu thereof, one month salary with allowances. It was further provided that if the petitioner remains absent for one month or more it will be presumed that he had left the service with effect from the date he remained absent. The petitioner left attending the office on 05.11.1993. The petitioner, prior to that, made applications on 03.11.1993 and

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04.11.1993 and without waiting for formal sanction, left the office and remained absent. The Divisional Forest Officer – respondent No.5 by notice dated 31.12.1993 (Annexure-P/2) informed the petitioner to join the duty within a period of two days as he had left the office without obtaining prior permission, failing which proceedings may be initiated for his removal from service. The petitioner was thereafter issued a show cause notice on 01.03.1994 (Annexure-P/3) for violating the Rule 7 of M.P. Conduct Rule 1965. In response to the first notice dated 31.12.1993 (P/2), the petitioner sent a letter (Annexure R/2-5 (1)) by registered post which was received in the office of respondent No. 5 on 21.01.1994. The petitioner in the said letter expressed his inability to join the office and stated that the petitioner would join the office after having been found fit. The petitioner further requested for grant of leave. No reply to the show cause notice dated 01.03.1994 (P/3) was filed. The enquiry, in absence of any response from the petitioner, was concluded and on the basis of the said enquiry it was found by order dated 14.09.1994 (Annexure R/2-5(3)) that the petitioner was no longer interested in continuing the service.

(3) The petitioner, thereafter, remained silent and after a period of about 10 years made an application dated 12.01.2004 (Annexure P/5) to respondent No. 3 for permitting him to join the service. Respondent No. 4- Conservator of Forest by order dated 26.02.2004 (Annexure P/8) dismissed the application of the petitioner dated 12.01.2004 on the ground that the services of the petitioner have been discontinued on the ground of condition No. 3 of the appointment order. Being aggrieved, the petitioner has filed this writ petition impugning the order dated 14.09.1994. The petitioner has not challenged the validity of the order dated 26.02.2004

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(P/8) in this writ petition whereby the application of the petitioner for permitting him to rejoin the service was dismissed.

(4) I have heard learned counsel for the parties and perused the records appended thereto.

(5) It is apparent that the petitioner has filed this writ petition in the month of April 2004 with inordinate and unexplained delay of more than 10 years. It is well settled principle of law that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution of India is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic, if there is inordinate delay on the part of the petitioner (See ***State of M.P. and others Vs. Nandlal Jaiswal and others***[1] ).

(6) The Supreme Court has approved the aforesaid dictum in ***Burn Standard Co. Ltd. & others Vs. Dinabandhu Majumdar & another***[2]; ***Karnataka Power Corporation Ltd. Through its Chairman & Managing Director & Another Vs. K. Thangappan & another***[3] and in various other cases also. There is no dispute with regard to the fact as stated above that the petitioner remained silent from 14.09.1994 to 12.01.2004 i.e. when the application was filed and thereafter in the month of April 2004 this petition was filed. The writ petition deserves to be dismissed on this ground alone.

(7) The other ground with regard to the right of the petitioner to the said post is concerned, the petitioner was appointed on temporary basis with a condition that the services of the petitioner could be terminated with one month prior notice or in lieu thereof with one month salary. It was further provided in the appointment order that if the petitioner remained absent for

one month or more, it would be presumed that the petitioner was no longer interested in continuation of service. The petitioner was given sufficient notice and it is not the case of the petitioner that he has not received the notice, but, the petitioner did not respond to the notice and did not join the service even after being found medically fit. Sufficient notice has also been given to the petitioner to find out whether he remained absent wilfully. On the basis of preliminary enquiry it was found proved by order dated 14.09.1994 that the petitioner was not interested in continuing the service. The petitioner has not challenged the enquiry or any other procedural aspect of the enquiry within a reasonable time and waited for more than 10 years before filing the application on 12.01.2004. The petitioner further does not dispute about his absence and the conditions of the appointment order. It is well settled that an employee appointed on temporary basis *de hors* the constitutional scheme of the employment, has no right to the post and the petitioner cannot be directed to be reinstated in service.

(8) Looking from all angles, this Court cannot exercise its power in exercise of its jurisdiction under Article 226 of the Constitution of India to grant a writ or direction to the respondents for reinstating the petitioner and granting him salary and other benefits w.e.f. 18.09.1994. The writ petition is accordingly dismissed. No order as to costs.

**Sd/-**
**Satish K. Agnihotri**
**Judge**

1. (1986) 4 SCC 566
2. (1995) 4 SCC 172
3. (2006) 4 SCC 322

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